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Date: September 29, 2010

Route To:

Subject: Appeal Recommendation Memorandum for Gunnison Travel Management Plan

To: Maribeth Gustafson, Appeal Deciding Officer

As the designated Appeal Reviewing Officer (ARO), this is my recommendation on the disposition of the appeals filed on the Gunnison Travel Management Plan on the Gunnison and Paonia Ranger Districts of the Gunnison National Forest. The appeals were filed pursuant to 36 CFR 215 and this letter addresses the following appeal:

Paul Turcke on behalf of Trails Preservation Alliance, Colorado Off-Highway Vehicle Coalition, Rocky Mountain Enduro Circuit, and the Blue Ribbon Coalition

Appeal number: 10-02-09-0061

DECISION BEING APPEALED

Forest Supervisor Charlie Richmond signed the Record of Decision (ROD) for the Gunnison National Forest Travel Management Plan on June 28, 2010. This decision was made to improve travel management on National Forest System lands on the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests. This decision was needed to design a sustainable transportation system in accordance with the Travel Management Rule.

APPEAL SUMMARY

The appellant (Paul Turcke) submitted comments during the comment period and is eligible to appeal. Paul Turcke's appeal was dated August 13, 2010. This timely appeal is addressed by this recommendation letter. The appellant requested any or all of the following relief:

1. Withdraw the decision;
2. Remand the decision for further analysis;
3. Utilize the Part 215 appeal process to facilitate additional analysis of at least portions of the decision (such as specific routes or trail systems), with implementation staged or delayed as appropriate.



ISSUES AND RESPONSES

Appeal Issue A.1: The Decision Fails to Properly Analyze or Address Motorized Recreation Demand. The Decision fails to reflect the basic fact that “[m]otorized recreation is a legitimate use” of the National Forests. Travel Management Rule Final Communication Plan, November 2, 2005, p.5. The various factors that must be reflected in a route designation decision include “provision of recreational opportunities” and “access needs.” 36 CFR § 212.55(a). While a broad analysis of all forms of recreation may be a worthy undertaking, the immediate task before the Forest here was to perform the analysis required by the Travel Management Rule (TMR). The TMR is focused on designation of roads, trails and areas for motorized vehicle travel. The Decision flowed from a fundamentally flawed mission to evaluate all forms of recreation demand, including non-motorized recreation, and allocate areas/routes accordingly.

Response: The appellant contends that 36 CFR 212.55(a) was violated because the decision and EIS did not properly analyze or address motorized recreation demand, specifically provision of recreational opportunities and access needs. 36 CFR 212.55(a) does require that the responsible official consider the effects of designating roads, trails and lands for motor vehicle use on provision of recreational opportunities and access needs.

A travel analysis was conducted in conjunction with the EIS. The travel analysis considered a multitude of recreational factors as well as access needs (Step 3, Travel Analysis Staff Report). Motorized recreational opportunity was identified in the EIS as a significant issue (FEIS, Issue 2, page 25) and was thus analyzed in the EIS. In addition, access was identified as a significant issue (FEIS, Issue 5, page 26). The existing condition and effects of the alternative designations on recreation opportunities were considered in the FEIS on pages 157 to 201. Current and future motorized recreation demand was specifically addressed throughout this section of the FEIS. The effects of the alternatives in context of the recreation opportunity spectrum were analyzed in the FEIS on pages 223 to 227.

The ROD considered the decision in context of the significant issues, including Issue 2-recreational opportunity and Issue 5-access. I find that the EIS and ROD considered provision of recreational opportunities and access needs as required by 36 CFR 212.55(a). I find no violation of law, regulation or policy and recommend affirming the Forest Supervisor’s decision in regards to this issue.

Appeal Issue A.2: The Decision Fails to Properly Analyze or Address Motorized Recreation Demand. The Forest Service is required by law to make decisions based on a multiple-use mandate, as outlined in statutes like the Multiple-Use Sustained Yield Act of 1960 (“MUSYA”) and the National Forest Management Act (“NFMA”). In particular, NFMA requires: In developing, maintaining, and revising plans of the National Forest System pursuant to this section, the Secretary shall assure that such plans -- (1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with [MUSYA], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness...NFMA §6. 16 U.S.C. § 1604(e).

MUSYA provides further clarification of the agency's duty to provide for "use" of the National Forest System, including outdoor recreation. MUSYA's policy statement explains: It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title... MUSYA §1; 16 U.S.C. § 528.

The Forest Service must comply with this legally-mandated approach to management, which is subject to review under applicable administrative procedures and the Administrative Procedure Act (the "APA").

Response: See response to A.1 above. Additionally, the Forest Service made the decision based on a multiple use mandate. "Alternative 2 was the Proposed Action in the Draft EIS. Based on public comments, further evaluations, and additional information the Preferred Alternative (Alt 5) was developed for the Final EIS. The Forest Service is directed to multiple use management and to sustain the natural resources of the forests. In order to maintain sustainable resource conditions not all uses in all places can be expected to be allowed. The Preferred Alternative provides for recreational uses (e.g. motorized travel) as do all the alternatives considered. Recreational travel is not appropriate or the best management for all areas of the National Forest." (Appendix X, Response to DEIS General Comments, page x-21)

"The basic principle of multiple uses recognizes that there are many values to public land and a variety of ways that our resources can be managed. Some of those uses may be complimentary and some may be in conflict. Our goal in multiple use management is to try to find a reasonable balance in the way we manage our resources so that by managing for one value we do not cause inappropriate or irreparable harm to other resources we are responsible for... In the travel plan there was extensive discussion and analysis about the potential effects of travel decisions on other resources. Our consideration of recreation opportunities and demand always played a prominent role in those discussions. In some cases decisions were heavily influenced by recreation considerations... By identifying several thousand miles of routes as open to public use we struck what we determined to be an acceptable balance that allows good opportunities for access and recreation even if it doesn't include everything that some recreationists would like to see. We recognize that allowing that level of recreation use would cause some impact to other resources but by carefully choosing which routes are open and which should be closed we hopefully reduced the level of those impacts to more reasonable levels that are sustainable over the long run. Just exactly where that balance point is will always be a matter of opinion but our actions are clearly within accepted norms for multiple use and sustained yield management." (Appendix X, Response to DEIS General Comments, page x-155)

Appeal Issue A.3: The Decision's emphasis on non-motorized recreation opportunity improperly distracted from proper focus on meeting motorized recreation demand. Additionally, the improper emphasis on allocating (indeed "awarding") routes to specified uses ultimately meant that motorized recreationists faced disproportionate restrictions. Even if it is proper to undertake the task of allocating motorized/nonmotorized recreation opportunity in a TMR process, the Decision's allocations fail to reflect the basic fact that many recreation forms are not

mutually exclusive. The Decision fails to properly focus on meeting motorized recreation demand or need. Given the lack of proper focus, a proper outcome was unattainable. Additionally, the Decision arbitrarily and capriciously allocates motorized/non-motorized recreation opportunities.

Response: The appellant contends that the decision is arbitrary and capricious in the way in allocates motorized and non-motorized recreation opportunities. The appellant contends that the focus on non-motorized recreation opportunities was improper and led to the arbitrary and capricious decision. The Administrative Procedure Act provides for reviewing courts to hold unlawful and set aside agency actions, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

A travel analysis was conducted in conjunction with the EIS. The travel analysis considered a multitude of recreational, environmental and operational factors (Step 3, Travel Analysis Staff Report). During the travel analysis motorized mixed-use was analyzed, which recognizes that many forms of recreation are not mutually exclusive. The travel analysis followed a well defined six step process (FSH 7709.55, Chapter 20), informed the responsible official of the current condition, and was the basis of Draft EIS Proposed Action (FEIS, page 15). The recreational experience and opportunity was considered a significant issue in the FEIS and included many forms of motorized recreation. Alternatives were developed to address the issues raised by the public and interdisciplinary team and included the consideration of multiple management objectives (FEIS, page 32). An alternative was developed, Alternative 4, which attempted to "address the increasing demand for ATV and motorcycle recreation in the Gunnison Basin travel analysis area" (FEIS, page 40). Considerable discussion is included in the FEIS regarding the existing condition and environmental impacts of the alternatives on recreation opportunities, both motorized and non-motorized (FEIS, page 157-228).

I find that the decision was not arbitrary and capricious and was based on the consideration of multiple issues, including the consideration of motorized recreation opportunities. The development of the alternatives, including the selected alternative, was based on a structured process based on management objectives and public comments. Impacts to both motorized and non-motorized recreation opportunities were analyzed and disclosed. I find no violation of law, regulation or policy and recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue B.1: The Decision Treats Unauthorized Routes Arbitrarily. There are several distinct and independent flaws in the Decision's treatment of "unauthorized" or "user-created" routes. In general terms, the Forest treated these as illegitimate and failed to meaningfully consider inclusion of such routes in the action alternatives. The inaccurate depiction of unauthorized routes constitutes independent violation of the Travel Management Rule and NEPA. The Forest misrepresents the status quo and dramatically understates the historical and existing OHV opportunity on the Forest. A failure to consider unauthorized routes violates both the letter and spirit of the Forest Service Travel Management Rule ("the Rule.").

Response: The appellant contends that how the Decision treated unauthorized or user-created routes was arbitrary and violated the Travel Management Rule and NEPA. The Travel Management Rule does not specifically define how unauthorized routes should be considered in

a decision to designate routes for motor vehicle use. NEPA requires the evaluation of the no action alternative (40 CFR 1502.14(d)), and the Forty Most Asked Questions developed by CEQ provides guidance on the no action alternative. The Forty Most Asked Questions states there are two interpretations of "no action": 1) continuation of current management or 2) the proposed activity would not take place.

The "status quo" is represented in Alternative 1, the No Action alternative. The starting point for Alternative 1 was the April 2001 Gunnison Travel Interim Restrictions Decision Notice. This starting point is consistent with Forest Service policy as defined in FSM 7715.03, which states that previous decisions should be used to "establish a starting point for proposals to change travel management decisions." Since the April 2001 decision, it has been illegal for the public to create new routes on the Gunnison National Forest and when a newly created route was found, the Forest Service took steps to mark them as closed (Appendix X, Response to DEIS General Comments, page X-199). Generally, unauthorized or user-created routes were not recognized as part of the existing transportation system. However, all routes in the 2001 inventory were evaluated, irrespective of origin (Appendix X, Response to DEIS General Comments, page X-200). In addition, routes identified by the public that were not included in the 2001 inventory, were investigated to determine if they could have existed prior to 2001. Some of those routes have been included as part of the existing condition (FEIS, page 8). The existing condition also included changes from the 2001 travel decision from subsequent site-specific project level NEPA decision.

The above process results in Alternative 1 representing all authorized routes, including user-created routes established prior to 2001. All unauthorized routes, including user-created routes created after 2001, are not part of the No Action alternative because if the proposed designation did not occur, the Forest Service would continue to take steps to mark these routes as closed and would continue to enforce these closures. The process used in regards to unauthorized and user-created routes was not arbitrary and is consistent with Forest Service policy. I find no violation of the Travel Management Rule or NEPA and recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue B.2: The Forest has independently violated NEPA's requirement that the "no action" alternative be properly identified. *See*, 40 CFR § 1502.14(d). Even in the purported "no action" alternative unauthorized routes are apparently not included. This failure to identify existing routes prevents proper comparison any of the action alternatives to the "baseline" or existing condition. The FEIS pretends that unauthorized routes do not exist, precluding NEPA's required comparison between the action alternatives and the human environmental baseline.

Response: The appellant contends that failure to include unauthorized routes in the no action alternative is a violation of NEPA, specifically 40 CFR 1502.14(d). NEPA requires the evaluation of the no action alternative and the Forty Most Asked Questions developed by CEQ provides guidance on the no action alternative. The Forty Most Asked Questions states there are two interpretations of "no action": 1) continuation of current management or 2) the proposed activity would not take place.

As stated in the response to appeal issue B.1, all currently authorized routes were included in the No Action alternative and that all unauthorized routes were not included. In addition, as unauthorized routes are discovered, steps would be taken to mark those routes as closed. This interpretation of no action is consistent with the continuation of current management as well as the how the situation would be if the proposed activity did not take place. I find no violation of 40 CFR 1502.14(d) or NEPA and recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue B.3: Where nonmotorized unauthorized routes are concerned, the Decision in some instances errs on the opposite side of the analytical spectrum and includes such routes with seemingly little or no analysis. It appears that the FS/BLM has largely accepted user created mountain bike trails without formal NEPA analysis. Examples include the Ferris Creek area and near Crested Butte, where relatively new, user-created mountain bike trails were apparently included in the Preferred Alternative. In fact, there is at least the perception in the user community that unauthorized mountain bike trails are generally accepted by the agency. See, Exhibit A, Denver Post article dated June 30, 2009. The Decision reflects arbitrary treatment of unauthorized routes based largely (if not entirely) on whether the route(s) in question presently receive motorized use.

Response: The appellant contends that how unauthorized routes were considered in the analysis was arbitrary, especially as it pertains to mountain bike routes versus motorized routes. The appellant contends that mountain bike trails were "accepted" without formal NEPA analysis.

Prior to the April 2001 Decision Notice for the Gunnison Travel Interim Restrictions, it was not illegal to ride off of existing routes in the majority of the Gunnison National Forest as long as resource damage was not occurring. Therefore a majority of the user created mountain bike trails were created legally. The Denver Post article the appellant references discusses how many user created mountain bike trails (more than 200 miles) were accepted by the Forest Service and are now "numbered and catalogued". The Denver Post article notes that this occurred in 1989, which was prior to the April 2001 Decision Notice. At that time, this was legal and many of these routes were accepted in 2001 as part of the decision to prohibit travel off of established routes. The April 2001 decision defined established routes as those that existed on the ground as of January 12, 2001. The effects of accepting these routes were documented in an EA in which six alternatives were analyzed in detail. This EA is the formal NEPA documentation for the decision that would have accepted those mountain bike trails in question. I find that the mountain bike trails in question underwent a formal NEPA analysis, specifically the NEPA process associated with the April 2001 Decision Notice for the Gunnison Travel Interim Restrictions.

All travel routes underwent the same process, which included utilizing the April 2001 decision as well as other site specific decisions as a starting point to describe the existing condition and No Action Alternative. All travel routes that were defined as part of the system in April 2001 were considered regardless of origin. All travel routes that were determined to be unauthorized routes after the April 2001 decision were not considered as part of the transportation system. I find that how unauthorized routes were considered was not arbitrary and recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue C.1: The Socioeconomic Analysis is Illegally Flawed. The Decision fails to adequately consider socioeconomic effects of the various alternatives. When an agency prepares an EIS "and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment." *Id.* A robust analysis is contemplated, for MUSYA states that "sustained yield" "means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." 16 USC § 531(b). In discharging these duties, the Secretary shall give "due consideration...to the relative values of the various resources in particular areas." 16 USC § 529. The Decision does not even recognize these criteria. Failing to properly define the target effectively precludes the analysis from hitting it. A proper analysis would seemingly include recognition of existing use patterns and levels, tied to specific roads/trails/areas of the Forest, followed by outputs to local communities. Put differently, the agency must put itself in a position to rationally evaluate the cost/benefit of various designation options for specific routes.

Response: The Forest Service assessed the potential impacts of travel management options on some societal values such as noise, dust, vehicle speed, and economics (FEIS, Pages 237 – 245). The Forest Supervisor considered the impacts to societal values in the ROD on page 14 and 15 and determined that travel management decisions have little potential to change or alter those effects.

The economic factors associated with travel were considered as well as the recreational use of NFS lands contribution to the local and state economy (FEIS, Pages 241 -242). The Forest Supervisor considered these impacts in the ROD on pages 14 and 15 and determined that the "travel management decision will not change the demand for and use of the Gunnison National Forest by the public" and that "there would be little or no adverse impacts to the local economy from these travel management decisions." I find that the Forest Supervisor considered the societal values and economic factors in the FEIS and ROD. I recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue D.1: The Decision Considered An Illegally Limited Range of Alternatives. The Forest considered only alternatives that would significantly reduce motorized recreation opportunity. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to the preferred alternative.

And

Appeal Issue D.2: A proper range of alternatives was not considered here. The range of alternatives starts from the assumption that the Forest will not meaningfully revisit the retrospective interpretation of any of its prior "designations" made in prior processes, including the 2001 "green to yellow" inventory. As a result of this questionable decision, the "high end" of combined motorized route mileage was identified in the "no action" alternative as 3,731 miles. FEIS at 50 (Table 2-7). The next and independent flaw is the illegally truncated range of alternatives that followed. Specifically, comparing the row in that Table entitled "routes within the scope of analysis" the figures for the four action alternatives are 2,392; 1,984; 2,399 and 2,334, respectively. Compared to the "no action" benchmark, these represent 64, 53, 65 and 63

percent of the "no action" mileages, respectively. In short, the agency somehow determined that no less than 35 percent of existing motorized routes must be eliminated from detailed analysis, and then analyzed a narrowly-truncated range of variations around that starting point. The Forest here arbitrarily created a range of alternatives narrowly distributed around an apparent "starting point" of a 35 percent reduction in route mileage.

Response to D.1 and D.2: The appellant contends that the Forest Service violated NEPA by considering only a limited range of alternatives. The appellant notes only alternatives that would reduce motorized recreation were considered. In addition the appellant contends that the proper range of alternatives was not considered because the Forest did not revisit prior designations and an "illegally truncated range of alternatives" created a "starting point" of 35 percent reduction in motorized routes.

FSM 7715.03 states that previous decisions should be used to "establish a starting point for proposals to change travel management decisions." In other words, the Forest Service wants its employees to build upon previous travel management decisions and not start off with a blank slate for every travel management decision. This would be inefficient and would substantially increase the cost of travel management planning. Therefore, not revisiting previous designations is consistent with Forest Service policy.

The "apparent starting point" of a 35 percent reduction in motorized routes the appellant contends illegally truncated the range of alternatives is a consequence of the purpose and need as well as the travel analysis. The purpose and need as stated on page 15 of the FEIS states: "[t]he purpose of the planning process is to determine the location and management of roads and trails needed for a transportation system that provides for resource protection, public safety, and recreation opportunities, meets access needs, and is within the ability of the agencies to manage and maintain." In addition, the purpose and need indicates that "there is a need to reduce motorized route miles within the federal system of roads and trails in an effort to provide for a more sustainable transportation system." The criteria of defining a transportation system within the agency's ability to manage and maintain constrains the range of alternatives to something a Forest can realistically manage. The transportation system that meets all the needs identified above are assessed in the transportation analysis, which aids in the determination of what routes should remain open to motorized travel. This further constrains the range of alternatives to specific needs, such as road closures for resource protection and designating roads open for specific desired access. Therefore, when comparing the action alternatives against the No Action alternative, as the appellant has done, seeing a 12 percent difference in motorized routes in the action alternatives does not necessarily mean an adequate range of alternatives was not analyzed. It just indicates a narrower decision space, within the context of the stated purpose and need, than the appellant would prefer. I find that not revisiting previous travel management decisions is consistent with Forest Service policy and not a violation of any law, regulation or policy. In addition, I find that the Forest did not arbitrarily develop a narrow range of alternatives; rather it was through the consideration of multiple factors in the travel analysis. I recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue E.1: The Cumulative Effects Analysis is Deficient. The Decision reflects an unusual and flawed procedure as well as unsupportable conclusions regarding analysis of

cumulative impacts. The cumulative impacts analysis is deficient for many resources, but is particularly lacking in assessing recreation impacts. The cumulative impacts treatment is curiously structured. For many resource areas, there is a separate section entitled "cumulative effects." Additionally, there is a section at the end of the FEIS ch. 3 entitled "Evaluation of Cumulative Impacts at the Landscape Level." FEIS at 269. All of the discussions are fraught with generalization. For many resources, there is no attempt at coverage aside from the "landscape level" section at the end of chapter 3. The selected procedure does not allow for a sufficient treatment of cumulative impacts.

Response: The appellant contends that the cumulative effects analysis is deficient in procedure and contains unsupportable conclusions. The recreation cumulative effects section is lacking and there is no attempt to cover cumulative impacts aside from a landscape level.

The CEQ for implementing NEPA (40 CFR 1500-1508) directs that under an EIS the proposal can be covered geographically, including actions in the same region. The appellant's comments were analyzed. It is appropriate to cover cumulative effects at a landscape level, found on page 269 of the FEIS. The cumulative effects section for recreation is found in the recreation section on page 200 and 201 of the FEIS. The recreation cumulative effects section adequately analyzed past, present and reasonably foreseeable actions combined with the direct and indirect effects of the alternatives. Such actions include but are not limited to recreation development, mining activity, grazing, fire suppression and timber sales. This cumulative effects section on page 201 of the FEIS also addressed the Gunnison Travel Management in relation to federal lands in Colorado.

Examples of other resources with cumulative effects analysis includes sensitive plants on page 81 of the FEIS, Wildlife, the lynx analysis on page 155 and the fritillary butterfly on page 156 of the FEIS. Based on the record, I found no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue E.2: The discussion regarding past, present, and reasonably foreseeable restrictions on motorized recreation is not adequate. The lack of specificity in this discussion precludes it from properly assessing cumulative impacts. This discussion must address not only physical resource factors, but other aspects of the "human environment" including recreation opportunities, access needs, local community support, and impacts of possible displaced use.

Response: The appellant contends that the discussion regarding past, present, and reasonably foreseeable restrictions on motorized recreation is not adequate. Aspects of the human environment including recreation opportunities, access needs, local community support and impacts of possible displaced use is not addressed. The appellant wants to know what the effects of displacement is to Colorado Forest, other states, and other forms of recreation.

Under an EIS, the requirements are to disclose the effects of the analysis area. The appellant's comments were analyzed. Page 269-274 of the FEIS states the cumulative impacts of the Gunnison Travel Management Project. For example, based on cumulative effects, there will be a perceived loss of recreational opportunities for motorized users. "Often the cumulative effects are displacement of users or substitution. Some motorized users will travel to other areas outside

of the region where it is perceived there is less restrictions or controls or they may alter their recreational expectations and activities for some areas. Some displaced users may seek private lands where specific recreational opportunities for various forms of OHV travel are allowed or provided for. (This needs a little more work stating that the FS is not responsible for solving the effects of these impacts, especially at a scope outside of the project area- Colorado Forests.)

Appeal Issue E.3: The possibility of displaced use is particularly notable, and is mentioned in the Decision. FEIS at 274. The FEIS acknowledges that "there are typically fewer miles of road and trail open to [motorized] users" and that "[o]ften the recreational impact of these cumulative effects is displacement of users or substitution." *Id.* Unfortunately, only identifying the tip of the planning iceberg does not comply with NEPA. The FEIS cogently touches on numerous cumulative impact issues. For example, what are the effects of displacing traditional GMUG users to (a) other Colorado forests; (b) other states; (c) other forms of recreation? These questions implicate a wide range of impacts. The FEIS raises these important questions but makes absolutely no attempt to analyze, let alone answer, them.

Response: Under 40CFR 1502.16, the analysis is completed for the sake of comparison among alternatives that are within the scope of the discussions of those elements. The appellants comments were analyzed. The discussion will include the environmental impacts of those alternatives, as well as any adverse environmental impacts that cannot be avoided. An EIS was prepared because there may be adverse incremental impacts which cannot be avoided. It is beyond the scope of the project to solve conflicts associated with user displacement outside of the Forest. (statements in the EIS to back up the road map of 40CFR 1502.22 could not be found- if the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall cost of obtaining it are exorbitant or are not known- the agency shall include that such information is unavailable or incomplete.)

Appeal Issue F.1: Maintenance Programs and Costs are Inadequately Analyzed. The TMR necessitates a reasoned analysis of maintenance history and future needs, for the designation criteria specifically require the responsible official to "consider effects on ... The need for maintenance and administration of roads, trails and areas... and the availability of resources for that maintenance and administration." 36 CFR 212.55(a). The Decision consistently misrepresents the nature of existing maintenance programs, most notably Colorado State OHV Program funds and grants. The possible, indeed likely, contributions by nonfederal sources for both funding and other aspects of maintenance should be considered in the designation process. Instead of properly recognizing past history and the commitment of user groups to continuing involvement, the FEIS grossly understates both, apparently to justify a less-ambitious route network.

Response: The appellant contends that maintenance programs and costs were inadequately analyzed the thus in violation of 36 CFR 212.55(a). In addition, the appellant contends that nonfederal funding such as Colorado State OHV Program were not recognized and thus underestimated the level the agency could appropriately manage the transportation system. 36 CFR 212.55(a) does require the responsible official to consider the effects of designation on maintenance and administration of the system and the availability of resources for that maintenance and administration.

A travel analysis was conducted in conjunction with the EIS. The travel analysis considered maintenance issues on a route by route basis (Step 3, Travel Analysis Staff Report). Maintenance and funding was identified in the FEIS as a significant issue (FEIS, page 27, Issue 7). In addition, the IDT evaluated the interpretation of the term "sustainability of a transportation system", which included funding allocated to maintain the transportation system at a predetermined level of quality and use (FEIS, page 13-14). The maintenance and administration of the transportation system by alternative was analyzed in detail on pages 254 through 269 of the FEIS. The responsible official considered Issue 7-maintenance and funding in context of the decision on page 5 of the ROD. In addition, the responsible official considered the sustainability of the transportation system in the ROD on page 15.

Nonfederal funding such as the Colorado State OHV Program was considered and is specifically mentioned on pages 176 and 200 of the FEIS, as well as other Nonfederal funding sources. In addition, on page 15 of the ROD, the responsible official states, "[t]he Preferred Alternative considers the existing and expected funding, grants, and other volunteer contributions related to road and trail maintenance in its assessment of scope and sustainability of the transportation system." I find no violation of law, regulation or policy and recommend affirming the Forest Supervisor's decision in regards to this issue.

Appeal Issue G.1: Analysis of Technical Issues is Procedurally Deficient. The methodology relied upon and the procedure by which the results were communicated with the public violate NEPA. Further, the substantive conclusions advanced by the Decision do not satisfy even arbitrary and capricious review.

The basic methodological structure of the wildlife analysis is questionable, for it largely eschews site-specific analysis for the use of generic "indicators" as a proxy for impacts which can be easily compared (arithmetically) across alternatives. *See*, FEIS at 108 (stream crossing #s across alternatives). This approach is questionable, as it utterly fails to connect route existence (or use) to habitat or site conditions (e.g. soil type, slope, mitigation) so as to intelligently portray actual impacts. Many other analyses lack even this level of rigor. For example, the FEIS purports to analyze impacts to Merriam's Turkey by generally stating that turkeys are susceptible to human disturbance at nest and roost sites, by promising that new routes will not be constructed without further analysis, and by generally concluding that "fewer routes is better" for turkeys. FEIS at 130. This conclusion is devoid of any citation to any source(s) for the multiple "technical" conclusions it advances. There is no attempt to identify nest or roost sites in relation to any route.

Among the more robust analyses attempted is that for elk, perhaps as a result of the iconic and economic importance of the species in Colorado and the availability of HE and HABCAP modeling. Whatever the value of these and similar tools, none have ever adequately considered an intuitively obvious factor – what are the relative impacts on elk occurring from "purely recreational" motorized travel, versus "nonmotorized" use which includes bipeds vigorously pursuing (and occasionally killing) elk from horses, mountain bikes, and on foot? Finally, none of the analyses, even the most rigorous, provide hard data or other comparable material to facilitate meaningful public review.

Response: The appellant contends that the analysis methods used for wildlife is deficient and violates NEPA. The conclusions do not satisfy arbitrary and capricious review. Non-motorized effects of wildlife were not considered. There are no citations backing up the conclusion for the Merriam's turkey.

Under 36 CFR Appendix B 219.35 project planning is to be done using the best available science and be consistent with provisions of the governing plan. The GMUG Forest Plan direction (as stated on page 115 of the wildlife analysis of the FEIS) for aquatic and terrestrial wildlife is to maintain viable populations of all existing vertebrate wildlife species. MIS have a dual functionality: 1) to estimate the effects of planning alternatives on fish and wildlife populations (36 CFR 219.19 (a) (1)) and 2) to monitor the effects of management activities on species via changes in population trends (36 CFR 219.19 (a) (6)).

A habitat effectiveness analysis for elk was conducted, with measurement indicators being road density and human activity on wildlife. Page 113- 119 of the FEIS of the wildlife section adequately describes the methodology and assumptions used. General wildlife species besides elk were also analyzed because they have the potential to be negatively impacted by travel management decisions. The wildlife species analyzed also represent a larger group of species using similar species. In addition, security areas were analyzed using GIS.

Page 112 of the FEIS states that motorized activity may have a greater impact on wildlife than non-motorized activity. Measurement indicators for analysis were therefore based on the greater impact- motorized. Page 112 includes several references relating to effects of human activities including motorized and non-motorized use (Joslin and Youmans 1999, Rowland et. al. 1996, Wisdom et. al. 2004, Naylor et. al., Francis et al. 2009, USDA 2008). "No positive benefits to wildlife have been identified from increases in travel management". Therefore, the conclusion that less routes is better for turkeys is supported in the General Wildlife Section on page 112. Based on the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue

Appeal Issue H.1: Specific Technical Conclusions are Arbitrary and Capricious. Site-specific decisions are apparently behind many, if not all, of the specific designations within the Decision. However, the agency has generally failed to present the rationale for individual routes. The only real insight to this process is afforded by the ROD, which summarizes the agency analysis for a number of the more complex (or controversial) routes. *See* ROD at 20-38. There are several problems with this approach. For many routes, which are not included among those discussed in the ROD's summary, the public has no insight whatsoever into the agency's analytical process. Further, even for the routes which are identified in the ROD, the discussion occurs after the close of comment and therefore a post hoc justification of an agency decision.

Response: Specific technical conclusions are not arbitrary and capricious. The agency has presented rationale for individual routes. Analysis for a number of the more complex routes is provided in the ROD, pages 20 to 38; *There are some routes and aspects of travel where, due to public interest and differing public perspectives on the most appropriate modes of travel, I have chosen to explain and further clarify my rationale and considerations (below) taken into account in making the decision on Gunnison National Forest travel management.* ROD, pg 18).

Additionally, the Route by Route Spreadsheet resides in the public record and provides rationale for individual routes: *"The objective of the route-by-route assessments were (sic) to define a transportation system within the agency's ability to manage, operate, maintain; and to offer a variety of users with a diverse experience while minimizing impacts to resources (i.e. project mission statement, May 2006)." (Travel Analysis Process, Staff Report, 2007, page 5)*

"A variety of route screening tools were used by the agency ID teams to evaluate various routes or areas and develop the Proposed Action. During the individual route evaluation process, areas with multiple resource or societal concerns were sometimes considered for closure, and areas with a potential for more motorized recreation opportunities were considered for expansion (e.g., the creation of looped routes or creating separate routes where uses were conflicting)." FEIS pg 12

"This travel analysis process involved balancing factors related to land management and recreational needs, environmental concerns, road and trail system operations, long-term funding expectations, public input, and the best available science related to natural resource management. Therefore this route-by-route travel analysis yielded a viable and sustainable transportation system of roads and trails that is defined as a minimum road system (36 CFR 212.5(b))." FEIS pg 14

RECOMMENDATION

A review was conducted pursuant to and in accordance with 36 CFR 215.19. The review included consideration of the appeal record, FEIS, ROD, comments received during the comment period, agency response to comments, appellant's appeal issues, and relief requested. Based on the review of the record I recommend affirming the Forest Supervisor's decision in whole.



Bill Dunkelberger
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Appeal Reviewing Officer

